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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

IN RE DRAM ANTITRUST LITIGATION ) Master File No. M-02-1486PJH  
 )  
 ) MDL No. 1486  
 )

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 )  
 This Document Relates to: ) **STIPULATION AND [PROPOSED]**  
 ) **ORDER ALLOWING THE FILING OF**  
 ) **CORRECTED THIRD AMENDED**  
 DIRECT PURCHASER ACTION ) **CONSOLIDATED COMPLAINT**  
 )  
 )

1 WHEREAS, defendants Mosel Vitelic Inc., and Mosel Vitelic Corporation were  
2 mistakenly named as Mosel Vitelic Corporation and Mosel Vitelic Corporation (USA),  
3 respectively, in the Third Amended Consolidated Complaint;

4 WHEREAS, plaintiffs desire to file a Corrected Third Amended Consolidated Complaint  
5 to cure this deficiency;

6 WHEREAS, no defendant shall be required to file an answer to the Corrected Third  
7 Amended Consolidated Complaint. Each defendant's last-filed answer shall be deemed to be its  
8 answer to the Corrected Third Amended Consolidated Complaint.

9 THEREFORE, the parties hereby stipulate as follows:

10 Plaintiffs may file a Corrected Third Amended Consolidated Complaint, a true and correct  
11 copy of which is attached hereto as Exhibit 1.

12 DATED: February 8, 2007

13 WOLF HALDENSTEIN ADLER  
14 FREEMAN & HERZ LLP  
15 FRANCIS A. BOTTINI, JR.

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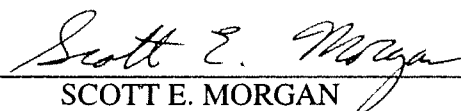
STIPULATION AND [PROPOSED] ORDER ALLOWING THE FILING OF CORRECTED THIRD AMENDED  
COMPLAINT -- [M-02-1486PJH]

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02-07-2007 11:07am From: WOLF HALDENSTEIN

1-619-234-4599

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1 DATED: February \_\_\_\_\_, 2007

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8  
9 DATED: February \_\_\_\_\_, 2007

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20 DATED: February \_\_\_\_\_, 2007

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28 STIPULATION AND [PROPOSED] ORDER ALLOWING THE FILING OF CORRECTED THIRD AMENDED  
COMPLAINT - [M-02-1486PJH]

1 DATED: February 8, 2007

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STIPULATION AND [PROPOSED] ORDER ALLOWING THE FILING OF CORRECTED THIRD AMENDED  
COMPLAINT -- [M-02-1486PJH]

1  
2 DATED: February 8, 2007

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10 Attorneys for Defendant NEC Electronics America,  
Inc.

11 \* \* \*

12 IT IS SO ORDERED.

13 Date: 2/20/07



DRAM:14502.STIP

STIPULATION AND [PROPOSED] ORDER ALLOWING THE FILING OF CORRECTED THIRD AMENDED COMPLAINT -- [M-02-1486PJH]

## **EXHIBIT 1**

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26 Co-Lead Counsel for Plaintiffs

27 [Additional Counsel on Signature Page]

28  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE DRAM ANTITRUST LITIGATION

Master File No. M-02-1486PJH

MDL No. 1486

This Document Relates to:

**CORRECTED THIRD  
CONSOLIDATED AMENDED CLASS  
ACTION COMPLAINT**

ALL ACTIONS

**JURY TRIAL DEMANDED**



## I. NATURE OF THE ACTION

1. This action is brought as a class action on behalf of a plaintiff class (the “Class”) consisting of all persons and entities who purchased in the United States Dynamic Random Access Memory chips or modules (“DRAM”) directly from the named defendants during the period from approximately April 1, 1999 through at least June 30, 2002 (the “Class Period”).

2. Defendants are the leading manufacturers of semiconductor memory products, including DRAM, and control the majority of the memory chip industry which annually generates worldwide revenues in excess of \$20 billion. Plaintiffs allege that during the Class Period, defendants conspired, combined and contracted to fix, raise, maintain, and stabilize the price at which DRAM were sold in the United States. As a result of defendants’ unlawful conduct, plaintiffs and the other members of the Class paid artificially inflated prices for DRAM during the Class Period. Such prices exceeded the amount they would have paid if the price for DRAM had been determined by a competitive market.

## II. JURISDICTION AND VENUE

3. Plaintiffs bring this action under §§ 4, 12 and 16 of the Clayton Act (15 U.S.C. §§ 15, 22 and 26) for treble damages and injunctive relief, as well as reasonable attorneys’ fees and costs with respect to the injuries sustained by plaintiff arising from violations by defendants of the federal antitrust laws, including § 1 of the Sherman Antitrust Act (15 U.S.C. § 1).

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a) and 1367.

5. Venue is proper in this judicial district pursuant to 15 U.S.C. §§ 15 and 22, and 28 U.S.C. § 1391(b) and (c), in that at least one of the defendants resides in this judicial district, is licensed to do business or is doing business in this judicial district.

## III. PARTIES

### **Plaintiffs**

6. Plaintiff onShore, Inc. is a Delaware corporation with its principal place of business in Chicago, Illinois. During the Class Period onShore purchased DRAM from defendant Crucial

Technology, Inc. ("Crucial"), a wholly owned subsidiary of defendant Micron Technology, Inc.

7. Plaintiff Internet Integration, Inc. is a California corporation with its principal place of business in Los Angeles. During the Class Period Internet Integration purchased DRAM from Crucial.

8. Plaintiff Kevin Irwin d/b/a Kevin's Computer and Photo is a business entity with its principal place of business in Pittsburgh, Pennsylvania. During the Class Period Kevin Irwin d/b/a Kevin's Computer and Photo purchased DRAM from Crucial.

9. Plaintiff PC Doctor, Inc. is a Pennsylvania corporation with its principal place of business in Pittsburgh, Pennsylvania. During the Class Period PC Doctor, Inc. purchased DRAM from Crucial.

10. Plaintiff Advanced Technology, Inc. is a corporation which during the class period purchased DRAM from Crucial.

11. Plaintiff Network Business Solutions, Inc. is a Maryland corporation with its principal place of business in Baltimore, Maryland. During the Class Period Network Business Solutions, Inc. purchased DRAM from Crucial.

12. Plaintiff JEM Electronics Distributors, Inc. is a Pennsylvania corporation. During the Class Period JEM Electronics Distributors, Inc. purchased DRAM from Crucial.

13. Plaintiff C3 Information Technology, LLC is a Pennsylvania corporation with its principal place of business in Conshohocken, Pennsylvania. During the Class Period C3 Information Technology, LLC purchased DRAM from Crucial.

14. Plaintiff Daniel Clement purchased DRAM during the Class Period from Crucial.

15. Plaintiff Web Ideals, LLC is a Pennsylvania Limited Liability Corporation with its principal place of business in Doylestown, Pennsylvania. During the Class Period Web Ideals, LLC purchased DRAM from Crucial.

16. Plaintiff 5207, Inc. is a corporation with its principal place of business in Skokie, Illinois. During the Class Period 5207, Inc. purchased DRAM from Crucial.

**Defendants**

17. Defendant Micron Technology, Inc. is a Delaware corporation with its principal place of business at 8000 South Federal Way, Boise, Idaho 83707. During the time period covered in this complaint, Micron Technology, Inc. designed, developed, manufactured, sold and distributed DRAM throughout the United States. DRAM is Micron's primary semiconductor product.

18. Defendant Micron Semiconductor Products, Inc. is an Idaho corporation located at 8000 South Federal Way, Boise, Idaho and is a wholly owned and controlled subsidiary of defendant Micron Technology, Inc. (collectively referred to as "Micron"). During the time period covered in this complaint, Micron sold DRAM through its Crucial Technology retail sales division to computer manufacturers and other end users throughout the United States.

19. Defendant Crucial Technology, Inc. ("Crucial") is a corporation with its principal place of business in Boise, Idaho. Crucial is a wholly owned subsidiary of Micron which operates the distribution business of Micron Technologies, Inc.

20. Defendant Infineon Technologies AG, a German corporation, maintains its headquarters at St. Martin-Str. 53, 81669, Munich, Germany. During the time period covered in this complaint, Infineon Technologies AG manufactured, sold, and distributed DRAM throughout the world, including the United States.

21. Defendant Infineon Technologies North America Corp. is a Delaware corporation which maintains offices at 1730 North First Street, San Jose, CA 95112. Infineon Technologies North America Corp. is a wholly owned and controlled subsidiary of defendant Infineon Technologies AG (collectively referred to as "Infineon"). During the time period in this complaint, Infineon Technologies North America Corp. sold and distributed DRAM throughout the United States.

22. Defendant Hynix Semiconductor, Inc. maintains its head offices at SAN 136-1, Ami-Ri Bubal-eub, Ichon-si, Kyoungki-do, Korea. During the time covered in this complaint, Hynix Semiconductor, Inc. manufactured, sold and distributed DRAM throughout the world,

1 including the United States.

2       23. Defendant Hynix Semiconductor America, Inc. is a California corporation located  
3 at 3101 North First Street, San Jose, California 95134. Hynix Semiconductor America, Inc. is a  
4 wholly owned and controlled subsidiary of defendant Hynix Semiconductor, Inc. (collectively  
5 referred to as “Hynix”). During the time period covered by this complaint, Hynix Semiconductor  
6 America, Inc. sold and distributed DRAM throughout the United States.

7       24. Defendant Samsung Electronics Co., Ltd., a Korean corporation, maintains its  
8 executive offices at Samsung Main Building, 250-2 ga, Taepyung-ro Chung-gu, Seoul, Korea.  
9 During the time period covered in this complaint, Samsung Electronics Co., Ltd. manufactured,  
10 sold and distributed DRAM throughout the world, including the United States.

11       25. Defendant Samsung Semiconductor, Inc. is a California corporation located at 3655  
12 North First Street, San Jose, California 95134. Samsung Semiconductor, Inc. is a wholly owned  
13 and controlled subsidiary of defendant Samsung Electronics Co., Ltd. (collectively referred to as  
14 “Samsung”). During the time period covered by this complaint, Samsung Semiconductor, Inc.  
15 sold and distributed DRAM throughout the United States.

16       26. Defendant Mosel Vitelic Inc. maintains its headquarters at No. 19 Li Hsin Road,  
17 Hsinchu Science Based Industrial Park, Hsinchu, Taiwan, R.O.C. During the time period covered  
18 by this complaint, Mosel Vitelic Inc. sold and distributed DRAM throughout the United States.

19       27. Defendant Mosel Vitelic Corporation is a California corporation located at 3910  
20 North First Street, San Jose, California 95134. Mosel Vitelic Corporation is a wholly owned and  
21 controlled subsidiary of defendant Mosel Vitelic Inc.. During the time period covered by this  
22 complaint, Mosel Vitelic Corporation sold and distributed DRAM throughout the United States.

23       28. Defendant Nanya Technology Corporation is a Taiwanese corporation which  
24 maintains its headquarters at HWA YA Technology Park, 669, Fu Hsing 3rd Rd. Keuishan,  
25 Taoyuan, Taiwan, R.O.C. During the time period covered by this complaint, Nanya Technology  
26 Corporation sold and distributed DRAM throughout the United States.  
27  
28

1           29. Defendant Nanya Technology Corporation USA is located at 675 E. Brokaw Road,  
2 San Jose, California 95112. Nanya Technology Corporation USA is a branch office of defendant  
3 Nanya Technology Corporation. In addition to the sales and marketing office in San Jose, Nanya  
4 Technology Corporation operates memory design centers in San Jose and Houston, Texas. During  
5 the time period covered by this complaint, Nanya Technology Corporation USA sold and  
6 distributed DRAM throughout the United States.

7           30. Defendant Winbond Electronics Corporation (“Winbond”), is headquartered at 4,  
8 Creaton Road, 111, Science-Based Industrial park, Hsinchu, Taiwan, R.O.C. During the time  
9 period covered in this complaint, Winbond manufactured, sold and distributed DRAM throughout  
10 the United States.

11           31. Defendant Winbond Electronics Corporation America, located at 2727 North First  
12 Street, San Jose, CA 95134, is a wholly-owned subsidiary of Winbond which sold and distributed  
13 DRAM throughout the United States during the time period covered in this complaint.

14           32. Defendant Elpida Memory, Inc. (“Elpida”) maintains its executive offices at  
15 Sumitomo Seimei Yaesu Bldg., 3F, 2-1 Yaseu 2-chome, Chuo-ku, Tokyo, Japan. During the time  
16 period covered in this complaint, Elpida manufactured, sold and distributed DRAM throughout the  
17 United States.

18           33. Defendant Elpida Memory (USA) Inc., located at 2001 Walsh Avenue, Santa Clara,  
19 CA 95050, is a wholly owned subsidiary of Elpida which sold and distributed DRAM throughout  
20 the United States during the time period covered in this complaint.

21           34. Defendant NEC Electronics America, Inc. (“NEC”) maintains its corporate  
22 headquarters at 2880 Scott Boulevard, Santa Clara, California 95050-2554 and its manufacturing  
23 plant in Roseville, California. It is a wholly owned subsidiary of NEC Electronics Corporation.  
24 During the time period covered in this complaint, NEC manufactured, sold and distributed DRAM  
25 throughout the United States.

26           35. Various other individuals, partnerships, corporations, and other business entities,  
27 unknown to the plaintiffs, have participated in the violations alleged herein and have performed  
28

1 acts and made statements in furtherance thereof.

2 36. The acts charged in this Complaint have been done by defendants or were ordered  
3 or done by defendants' officers, agents, employees, or representatives, while actively engaged in  
4 the management of defendants' affairs.

#### 5 IV. CLASS ACTION ALLEGATIONS

6 37. Plaintiffs bring this action both on behalf of themselves, and as a class action  
7 pursuant to Federal Rules of Civil Procedure, Rule 23(a) and (b)(3), on behalf of the following  
8 class (the "Class").

9 All individuals and entities who, during the period from approximately  
10 April 1, 1999 through at least June 30, 2002 (the "Class Period"),  
11 purchased DRAM in the United States directly from the defendants or  
12 their subsidiaries. Excluded from the class are defendants and their  
13 parents, subsidiaries, affiliates, all governmental entities, and co-  
14 conspirators.

15 38. Plaintiffs do not know the exact number of class members because such information  
16 is in the exclusive control of defendants. Plaintiffs believe that, due to the nature of the trade and  
17 commerce involved, there are most likely hundreds of thousands of class members, geographically  
18 dispersed throughout the United States such that joinder of all class members is impracticable.

19 39. Plaintiffs' claims are typical of the claims of the class in that plaintiffs are direct  
20 purchasers of DRAM, all class members were damaged by the same wrongful conduct of  
21 defendants and their co-conspirators as alleged herein, and the relief sought is common to the  
22 class.

23 40. Numerous questions of law or fact arise from defendants' anticompetitive conduct  
24 that is common to the class. Among the questions of law or fact common to the class are:

25 a. whether defendants engaged in a contract, combination or conspiracy among  
26 themselves to fix, maintain or stabilize the prices of, or allocate the market for, DRAM sold in the  
27 United States;  
28

b. whether the conduct of defendants caused prices of DRAM to be artificially inflated to non-competitive levels; and

c. whether plaintiff and other members of the class were injured by the conduct of defendants and, if so, the appropriate class-wide measure of damages and appropriate injunctive relief.

41. These common questions of law or fact are common to the class, and predominate over any other questions affecting only individual class members.

42. Plaintiffs will fairly and adequately represent the interests of the class in that plaintiffs are typical direct purchasers of DRAM and have no conflicts with any other member of the class. Furthermore, plaintiffs have retained competent counsel experienced in antitrust and class action litigation.

43. A class action is superior to the alternatives, if any, for the fair and efficient adjudication of this controversy.

44. Prosecution of separate actions by individual class members would create the risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for the defendants.

45. Injunctive relief is appropriate as to the class as a whole because defendants have acted or refused to act on grounds generally applicable to the class.

46. Plaintiffs reserve the right to expand, modify or alter the class definition in response to information learned during discovery.

## V. TRADE AND COMMERCE

47. During the Class Period, defendants sold and shipped substantial quantities of DRAM in a continuous and uninterrupted flow of interstate and international commerce to customers located in states other than the states in which defendants are located.

48. The business activities of defendants that are the subject of this Complaint were within the flow of, and substantially affected, interstate trade and commerce.

49. During the Class Period, defendants, amongst whom are the four largest DRAM



1 producers in the world, have most of the DRAM sales in the global market.

## 2 VI. STATEMENT OF FACTS

### 3 A. The DRAM Industry

4 50. DRAM are high density, low-cost-per bit, random access memory components that  
5 store digital information and provide high-speed storage and retrieval of data used in personal  
6 computers, printers, digital cameras, wireless telephones, and other electronic devices as a storage  
7 module to hold data as it is processed. DRAM is the most common kind of random access  
8 memory chip sold both in new computers and computer upgrades in the United States. DRAM is  
9 sold in individual chips or modules with several chips attached to the module.

10 51. DRAM revenue exceeds \$20 billion a year. The world's top four makers of  
11 DRAM, defendants herein, control roughly 70% of the market; the top six manufacturers,  
12 defendants herein, control 96% of the market. As of 2000, Samsung was the top DRAM  
13 manufacturer with 23% of the market share, followed by Micron with 21%, Hynix with 19% and  
14 Toshiba with 7%. At the end of 2001, Micron acquired Toshiba's DRAM production, further  
15 consolidated the industry and the dominant market position exercised by defendants. Thereafter,  
16 Infineon became the fourth largest DRAM maker.

### 17 B. DRAM Prices Fall Steadily Prior to the Class Period

18 52. At certain times beginning at least as early as 1999, the prices of DRAM declined  
19 dramatically.

20 53. On information and belief, as a result of these price declines, each of the defendants  
21 had experienced material decreases in selling prices, and, at times, were selling DRAM at or below  
22 manufacturing costs. All of the defendants were facing an uncertain future if prices continued to  
23 decline with potential bankruptcy as a possibility for some, and a continuing erosion of profits for  
24 others.

### 25 C. Price Fixing and the Rise in DRAM Prices During the Class Period

26 54. In view of the economic conditions of the industry, the defendants entered into  
27 agreements designed to combat the price decline in the industry. These agreements had the effect  
28



1 both of artificially limiting the rate of DRAM price declines, and, at other times, of artificially  
2 increasing the DRAM price.

3 55. For example, sometime in the Spring or early summer of 1999, and again sometime  
4 in the fall of 2001, realizing the economic trends of the industry, defendants agreed to reduce  
5 supply in order to artificially raise prices. As part of their agreement, each defendant agreed to cut  
6 production so that, as supplies were restrained by their agreement, prices for DRAM would  
7 increase. Thus, throughout the Class Period, Defendants entered into agreements or  
8 understandings regarding the sale and marketing of DRAM, the purpose of which was to raise, fix  
9 and stabilize the prices for DRAM.

10 56. A news article on the DRAM industry reported that defendant Mosel Vitelic and  
11 other DRAM producers had met to discuss measures that could be taken to halt “the downward  
12 spiral of DRAM prices.” Defendant Mosel Vitelic’s Vice President Chang indicated in September  
13 2001 that “a basis for understanding had been reached” between chip makers to “trim some  
14 production starting September.” Chang stated that all DRAM makers would have to agree for the  
15 plan to have the desired effect of raising prices.

16 57. On or about November 2001, prices for DRAM rose dramatically, and by February  
17 2002, prices had risen as high as \$4.50.

18 58. It has been reported in the press that an officer of DRAM manufacturer Mosel  
19 Vitelic admitted that price fixing meetings occurred, and that an agreement had been reached  
20 between the major DRAM producers to push prices up by reducing supply. According to press  
21 reports, Hynix and Samsung executives visited both Mosel Vitelic and Nanya Technology  
22 executives to discuss these agreements.

23 59. The ability of DRAM makers to fix the price of their product was confirmed by  
24 defendant Mosel Vitelic Vice President Thomas Chang’s statements reported in the Detroit News  
25 and the Taipei Times on May 16 and May 17, 2002, respectively. According to the reports, Mosel  
26 Vitelic Inc., Taiwan’s third-largest memory-chip maker, said it agreed with rivals to restrict spot  
27 market sales, aiming to boost chip prices.” The reports indicated that DRAM makers were  
28

1 attempting to “encourage a price of \$3” for DRAM chips. Chang stated “You don’t need to have a  
2 meeting, you just need to have a phone call.” The reports indicated that there was no formal  
3 meeting of DRAM makers because according to Chang, “Everybody knows each other. We just  
4 said try not to sell below \$3.”

## 5 **VII. VIOLATIONS ALLEGED**

6 60. Plaintiffs incorporate by reference as if fully set forth, the preceding allegations of  
7 this Complaint.

8 61. Beginning in or about April 1, 1999, the exact date being unknown to plaintiffs,  
9 defendants, by and through their officers, directors, employees, agents, or other representatives,  
10 entered in a continuing contract, combination or conspiracy to unreasonably restrain trade and  
11 commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

12 62. Defendants, by their unlawful conspiracy, artificially raised, inflated and  
13 maintained the market price of DRAM as herein alleged.

14 63. The contract, combination or conspiracy consisted of a continuing agreement,  
15 understanding and concert of action among defendants and their co-conspirators, the substantial  
16 terms of which were to fix, raise, maintain and stabilize the prices of, and/or allocate the market  
17 for, DRAM they sold in the United States.

18 64. Upon information and belief, for the purpose of formulating and effectuating their  
19 contract, combination or conspiracy, defendants and their co-conspirators did those things they  
20 contracted, combined or conspired to do, including:

21 a. participating in meetings and conversations to discuss the prices of and/or  
22 allocate the market for DRAM;

23 b. agreeing to manipulate prices and supply so as to boost sagging DRAM  
24 sales in a manner that deprived direct purchasers of free and open competition;

25 c. issuing price announcements and price quotations in accordance with the  
26 agreements reached; and  
27

28 d. selling DRAM to customers in the United States at non-competitive prices.

65. As a direct result of the unlawful conduct of defendants and their co-conspirators in furtherance of their continuing contract, combination or conspiracy, plaintiffs and other members of the class have been injured in their business and property in that they have paid more for DRAM than they would have paid in the absence of defendants' price fixing.

66. On June 18, 2002, defendant Micron announced it had been cooperating with the Department of Justice's antitrust investigation of the DRAM industry.

67. By June 20, 2002, defendants Samsung, Hynix and Infineon confirmed that they had received subpoenas from a grand jury which has been publicly reported as having been led in this District.

68. On September 12, 2003, defendants Elpida Memory and NEC Electronics America announced that they had received subpoenas from the grand jury investigating manipulation of the market for DRAM.

69. In addition, analysts have indicated that the Department of Justice may be investigating DRAM producers, including defendants, to determine whether memory producers combined to lower prices in order to drive smaller, weaker rivals out of the market. The result of this illegal anticompetitive activity is to limit the number of DRAM producers and stifle future competition and result in irreversible price increases.

70. Published reports indicate that the Department of Justice's investigation is broad in scope and includes numerous DRAM makers including all of the defendants herein.

71. On or about September 14, 2004, defendant Infineon Technologies AG entered into a plea agreement with the government pursuant to which it agreed to plead guilty to conspiring to fix prices in the DRAM market from July 1, 1999 through June 15, 2002.

72. On or about April 20, 2005, defendant Hynix Semiconductor Inc. entered into a plea agreement with the government pursuant to which it agreed to plead guilty to conspiring to fix prices in the DRAM market from April 1, 1999 through June 15, 2002.

### VIII. EFFECTS

73. The above combination and conspiracy has had the following effects, among others:

a. price competition in the sale of DRAM by defendants and their co-conspirators has been restrained, suppressed and eliminated throughout the United States;

b. prices for DRAM sold by defendants have been raised, fixed, maintained and stabilized at artificially high and noncompetitive levels throughout the United States; and

c. direct purchasers of DRAM from defendants have been deprived of the benefit of free and open competition in the purchase of DRAM.

74. As a direct and proximate result of the unlawful conduct of defendants, plaintiffs and other members of the class have been injured in their business and property in that they paid more for DRAM than they otherwise would have paid in the absence of the unlawful conduct of defendants.

## IX. FRAUDULENT CONCEALMENT

75. Plaintiffs had no knowledge of the combination and conspiracy alleged herein, or of any facts that might have led to the discovery thereof in the exercise of reasonable diligence, prior to June, 2002 when defendants Micron, Samsung, Hynix and Infineon announced that the Department of Justice was investigating the DRAM industry.

76. Plaintiffs could not have discovered the existence of the combination and conspiracy alleged herein at an earlier date by the exercise of reasonable due diligence because of the deceptive practices and techniques of secrecy employed by the defendants and their co-conspirators to avoid detection and affirmatively conceal such violations including, without limitation, falsely attributing price increases to increased demand, shortages in supply, increased manufacturing costs, increased prices of labor and of raw materials, and/or insufficient production capacity. Defendants and their co-conspirators also falsely informed their customers that they were unable to sell their products at a lower price due to increased manufacturing costs, increased prices of labor and of raw materials, and insufficient production capacity.

77. These false statements included, without limitation:

a. in an article in Electronic News on September 13, 1999, defendants attributed DRAM price increases to increased demand due to strong sales of low PCs incorporating

1 large quantities of DRAM. Avo Kanadjian, vice president of marketing of defendant Samsung  
2 Semiconductor, Inc. said: "Because we see the value PC and free PCs entering the market at  
3 extraordinary numbers, DRAM oversupply has silently gone into a shortage." Chee-Wai Ho,  
4 director of product marketing for memory products at defendant Infineon Technologies AG  
5 agreed.

6 b. in an interview on December 4, 2001, published on Simmtester.com, Steve  
7 Appleton, chief executive officer of defendant Micron Technology, Inc., was asked why prices had  
8 recently increased sharply and suddenly. He answered:

9 I have no idea. There clearly was a belated increase in demand as the seasonal  
10 rebound we had expected two-and-a-half months earlier finally kicked in. And,  
11 clearly the Japanese are cutting back their DRAM production. Even Hynix, which  
12 is so unpredictable, cut some production by temporarily closing its Eugene, Ore.,  
13 fab. When it was running at 40K wafer capacity a month, that fab alone probably  
14 had about 2.5% of the world's DRAM production.

15 c. in a press release issued on April 15, 2002, Hynix cited increased demand in  
16 the DRAM market as the reason for an increase in revenue.

17 78. Plaintiffs had no reason to disbelieve these statements which on their face appeared  
18 to be reasonable explanations for the pricing of DRAM. Furthermore, most of the explanations  
19 provided by defendants involved non-public and/or proprietary information completely in  
20 defendants' control such that plaintiffs and members of the class could not verify their accuracy.  
21 Defendants' purported reasons for the price increases of DRAM were materially false and  
22 misleading and were made for the purpose of concealing defendants' anti-competitive scheme as  
23 alleged herein. In truth, at all relevant times, the price of DRAM was artificially inflated and  
24 maintained as a direct result of the defendants' anti-competitive scheme, the operation of which  
25 was a substantial (but undisclosed) factor in the pricing of DRAM during the class period.  
26

27 79. As a result of the fraudulent concealment of the conspiracy, Plaintiffs assert the  
28 tolling of the applicable statute of limitations affecting the causes of action by Plaintiffs and the

1 member of the class.

2 **X. DAMAGES**

3 80. During the Class Period, plaintiffs and the other members of the class purchased  
4 DRAM directly from defendants, or their subsidiaries, agents, and/or affiliates, and, by reason of  
5 the antitrust violations herein alleged, paid more for such products than they would have paid in  
6 the absence of such antitrust violations. As a result, plaintiffs and the other members of the class  
7 have sustained damages to their business and property in an amount to be determined at trial.

8 **XI. PRAYER FOR RELIEF**

9 WHEREFORE, plaintiff demands judgment against defendants as follows:

10 A. A declaration that this action is a proper class action under Federal Rules of Civil  
11 Procedure, Rule 23(b)(3) on behalf of the class as defined herein, and an Order directing that  
12 reasonable notice of this action, as provided by Federal Rules of Civil Procedure, Rule 23(c)(2), be  
13 given to each member of the class;

14 B. A declaration that the unlawful combination and conspiracy alleged herein is an  
15 unreasonable restraint of trade of commerce in violation of Section 1 of the Sherman Act, 15  
16 U.S.C. § 1;

17 C. An injunction enjoining, preliminarily and permanently, defendants from  
18 continuing the unlawful combination and conspiracy alleged herein;

19 D. An award to plaintiffs and each member of the class damages, as provided by law,  
20 and joint and several judgments in favor of plaintiffs and each member of the class against  
21 defendants, and each of them, in an amount to be trebled in accordance with the antitrust laws;

22 E. An award to plaintiffs and the class for the costs of this suit (including expert fees),  
23 and reasonable attorneys' fees, as provided by law; and

24 F. An award for such other and further relief as the nature of this case may require or  
25 as this court deems just, equitable and proper.  
26  
27  
28

**JURY DEMAND**

Plaintiffs demand a jury trial, pursuant to Federal Rules of Civil Procedure, Rule 38(b), of all triable issues.

DATED: February 7, 2007

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DECLARATION OF SERVICE

I, Maureen Longdo , the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested in the within action; that declarant's business address is 750 B Street, Suite 2770, San Diego, California 92101.

2. That on February 9, 2007, declarant served STIPULATION AND [PROPOSED] ORDER ALLOWING THE FILING OF CORRECTED THIRD AMENDED CONSOLIDATED COMPLAINT via the CM/ECF System to the parties who are registered participants of the CM/ECF System.

3. That there is regular communication between the parties.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 9th day of February 2007, at San Diego, California.

  
MAUREEN LONGDO



DYNAMIC RANDOM ACCESS MEMORY (DRAM)

Service List -- October 7, 2003

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